

# *DONALD J. NITZ & ASSOCIATES, INC.*

---

SELF CONTAINED REAL PROPERTY APPRAISAL

Fee Simple Interest of Wesleyan University  
140 Acres +/- of land  
S/S of Country Club Road and W/S of Massa Tom Road  
Middletown, Connecticut



Reflecting Market Conditions  
as of  
October 27, 2000

# *DONALD J. NITZ & ASSOCIATES, INC.*

---

## *Real Estate Appraisers & Consultants*

*Donald J. Nitz, MAI, SRA  
Jennifer Nitz Suraci  
Daniel J. Orth IV*

*52 Washington Avenue  
P.O. Box 254  
North Haven, CT 06473  
(203) 239-1679  
Fax 239-1429*

November 10, 2000

Mr. Joseph Lombardo  
P. O. Box 255  
Middlefield, Connecticut 06455

Re: Real Estate consisting of 140 acres +/- of land located  
S/S of Country Club Road and W/S of Massa Tom Road  
Middletown, CT.  
Owned by: Wesleyan Univeristy

Dear Mr. Lombardo:

As requested, I have prepared the following valuation analysis of the above referred to real estate for the purpose of estimating the current market value of the fee simple estate in said property, as of October 27, 2000.

As agreed, this appraisal is to be prepared in a full narrative format as a Self-Contained Appraisal Report in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP), as promulgated by the Appraisal Standards Board of the Appraisal Foundation; and incorporates the requirements set forth by Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), effective as of August, 1990.

The subject property consists of an irregularly shaped parcel of land having an undetermined amount of frontage along Country Club Road, containing an area of approximately 140 acres. Access is assumed to be available from Country Club Road via Massa Tom Road (not a municipal public highway) which presently consists of a marked walking and all terrain vehicle trail that extends southerly from Country Club Road along the easterly side of the subject property and beyond.

The subject property is zoned R-45 and is wooded with sloping and rolling contours. No survey is available and the legal description of record only identifies frontage on Massa Tom Road and a "highway", presumed to be Massa Tom Road. Assessors tax maps indicate the possibility of some frontage along Country Club Road

where Country Club Road and Massa Tom Road intersect. At this point, there is located a short stub of a street. For purposes of this appraisal, it is assumed that the frontage available to access the subject property would be from this location. Public water supply is located within the general area and may be available for extension to the subject property. Sanitary sewers are not available and sanitary disposal would require individual on site septic systems.

Considering all relevant factors, it is the opinion of your appraiser that the subject property has the potential for residential subdivision in accordance with zoning regulations of the City of Middletown.

Based upon my investigation and analysis of the real estate market in the area, as it affects the subject property, it is my opinion that its market value, as of October 27, 2000 is:

**EIGHT HUNDRED FORTY THOUSAND (\$840,000) DOLLARS**

My estimate of value does not reflect any possible limitations on the marketability and/or mortgaging of the property as a result of the conditions governed by Public Act 84-535 (an act concerning clarification of permits for hazardous waste). That is, I assume that there are no environmental conditions which would adversely affect the value of the property. Should a soil survey reveal hazardous waste, we reserve the right to revise and modify our estimate of value.

I further certify that to the best of my knowledge and belief the information and statements contained in this report are correct; that the value found above represents our best judgment as to the total market value of the fee simple title thereto; that we have no personal interest present or prospective in said property or in the amount of the appraisal value thereof; that our employment or fee is not contingent upon the value reported; that the appraisal has been made in accordance with the standards and practices of the American Institute of Real Estate Appraisers.

Mr. Lombardo

-3-

November 10, 2000

The competency provision adopted by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires an appraiser to have both the knowledge and experience to perform a specific appraisal assignment properly. Enclosed herein, on page 29 are my qualifications and related appraisal experience which demonstrates my level of competency with respect to the valuation of the subject property.

Respectfully submitted,

DONALD J. NITZ & ASSOC., INC.

  
Donald J. Nitz, MAI, SRA  
President

TABLE OF CONTENTS

PAGE

Summary of Salient Facts and Conclusions ..... 1

Photographs of Subject Property ..... 3

Purpose of the Appraisal ..... 7

Property Rights Appraised ..... 7

Function of the Appraisal ..... 7

Market Value Definition ..... 7

Scope of the Appraisal ..... 8

Identification of the Property ..... 8

Community Data ..... 8

Neighborhood Data ..... 9

Site Description ..... 10

Zoning ..... 11

Assessment and Tax Data ..... 11

Description of the Improvements ..... 12

Highest and Best Use ..... 12

Valuation Premise ..... 14

    Cost Approach ..... 15

    Income Capitalization Approach ..... 15

    Sales Comparison Approach ..... 15

Correlation and Final Value Conclusion ..... 25

Assumptions and Limiting Conditions ..... 26

Certification ..... 28

Qualifications of the Appraiser ..... 29

Addenda

Property and Topography Map, Legal Description, Portion of  
Memorandum Dated November 29, 1999, LLESS Zoning Regulations

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

PROPERTY ADDRESS: S/S of Country Club Road and  
W/S of Massa Tom Road  
Middletown, Connecticut

OWNERS OF RECORD: Wesleyan University

LEGAL REFERENCE: Volume 354, Page 626

PURPOSE OF THE APPRAISAL: To estimate the current market  
value of the fee simple estate

FUNCTION OF THE APPRAISAL: To estimate the value of the prop-  
erty for possible acquisition  
purposes

DATE OF APPRAISAL: October 27, 2000

LAND AREA: 140 acres +/-

FRONTAGE: Country Club Road and  
Massa Tom Road, (assumed  
50'+/-) on Country Club  
Road.

NATIONAL FLOOD INSURANCE  
PROGRAM (FEMA):  
DESIGNATION: Zone X  
COMMUNITY PANEL NO.: 090068-0007B  
EFFECTIVE DATE: July 16, 1990

CONNECTICUT CENSUS TRACT NO: 5414

STANDARD METROPOLITAN  
STATISTICAL AREA NO.: 5020

ASSESSMENT AND TAXES: Map 3, Block 20-1, Parcel 9  
Assessment: \$540,820  
Real Estate Taxes: Tax Exempt

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

ZONING: R-45 Residential Zone

PROPERTY TYPE: Vacant, unimproved land

GROSS BUILDING AREA: N/A

HIGHEST AND BEST USE: The development of the site for residential purposes in accordance with zoning regulations or to preserve the property as open space for passive recreation use.

ESTIMATE MARKETING TIME: Market value conclusions recognize the characteristics of the subject real estate and consider the current economic environment and its effect on real property. A marketing period of one to two years is indicated for the subject property due to its uniqueness and limited number of potential buyers.

COST APPROACH TO VALUE: Not developed

INCOME CAPITALIZATION APPROACH TO VALUE: Not developed

SALES COMPARISON APPROACH TO VALUE: \$840,000

PHOTOGRAPHS OF SUBJECT PROPERTY



1. General interior view of the subject property.



2. General interior view of the subject property.

PHOTOGRAPHS OF SUBJECT PROPERTY



3. View of Massa Tom Road, looking southerly.



4. View of Massa Tom Road, looking southerly.

#### PURPOSE OF THE APPRAISAL

The purpose of this appraisal is to estimate the current market value of the fee simple estate in the property being appraised, as of October 27, 2000.

#### PROPERTY RIGHTS APPRAISED

Fee simple estate is defined as "Absolute ownership unencumbered by any other interest or estate; subject only to the limitations of eminent domain, escheat, police power, and taxation", The Dictionary of Real Estate Appraisal, published by the American Institute of Real Estate Appraisers, Page 123.

#### FUNCTION OF THE APPRAISAL

It is my understanding that this appraisal is to be utilized to assist the client in estimating the value of the subject property for possible acquisition purposes.

#### MARKET VALUE DEFINITION

Market Value is defined as "the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and assuming the sale is not affected by undue stimulus". Implicit in this definition is the consummation of the sale as of a specified date and the passing of title from the seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and each acting in what they consider their own best interest;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. the price represents a normal consideration for the property sold unaffected by special or creative financing or sale concessions granted by anyone associated with the sale.

Source: Federal Register, Volume 55, No. 164, dated August 23, 1990, Rules and Regulations and in the FDIC's final rule of FIRREA - 12CFR, Part 323.2.

#### SCOPE OF THE APPRAISAL

In the process of completing this appraisal report, my activities included but were not limited to the following:

1. A physical inspection of the property on October 27, 2000.
2. Research of all pertinent public records available in the Middletown Assessor's and Town Clerk's Offices as well as the Planning and Zoning Department;
3. A review of any survey maps available for the subject property;
4. A survey and analysis of all pertinent market data, including sales activity, financing terms, competition, trends etc.;
5. The development of the Sales Comparison Approach

#### IDENTIFICATION OF THE PROPERTY

An examination of the land records of the City of Middletown disclosed in Volume 354, Page 626 that Wesleyan University is the owner of certain pieces or parcels of land situated in the City of Middletown, County of Middlesex and State of Connecticut. This property is identified on the assessors tax maps as Maps 3, 4 and 7, Block 20-1, Lot 9.

A copy of the legal descriptions of record may be found in the Addenda of this appraisal report.

#### COMMUNITY DATA

The City of Middletown is located in the northwesterly corner of Middlesex County at the intersections of New Haven and Hartford Counties and is bordered on the north by the Towns of Berlin and Cromwell, on the east by the Towns of Portland and East Hampton (separated by the Connecticut River), on the south by the Towns of Haddam and Durham and the west by the Town of Middlefield and City of Meriden; encompassing an area of approximately 42.9 square miles.

Middletown is located geographically in the center of the state, within the Hartford/New Haven corridor between Inter-state 91 and Route 9. In addition, secondary Routes 322 (formerly known as Route 66), 372 and 3 provide Middletown with excellent accessibility to four major employment centers including Hartford, Middletown, New Haven and New Britain. Connecticut Route Nos. 147, 157 and 17 all travel in a generally north/south direction and link the central portion of the city to the Towns of Durham and Middlefield to the south.

#### COMMUNITY DATA

According to the Connecticut Market Data Report as published by the Connecticut Department of Economic Development - Research and Planning Division, the City of Middletown had a reported 1992 population of approximately 42,603 persons which indicated a population density of 9.931 persons per square mile. The 1992 population represents a .37% decrease over the 1990 U.S. Census Bureau reported population of 42,762 persons. The reported 1990 population represents a 9.5% increase over the reported 1980 population of 39,040 persons. The projected population for 2000 is approximately 43,000.

The total labor force in the City of Middletown, as of January 1996 was 23,605 persons of which approximately 21,890 persons were employed and 1,715 persons were unemployed indicating an unemployment rate of 7.3% which is higher than the overall rate for the Hartford Labor Market Area of 6.2% and 5.8% (not seasonally adjusted) for the State of Connecticut for the same period.

The City of Middletown has a mayor, common council form of government with a full time police and fire department.

In conclusion, the general and specific location of the City of Middletown is considered to be above average with respect to proximity to major highways, employment centers and urban amenities.

#### NEIGHBORHOOD DATA

The subject property is located within the northwesterly section of Middletown being approximately two miles easterly of the Meriden/Middletown city line and approximately three and three quarter miles westerly of the city's municipal and central business district. Interstate 91, which is a major north/south limited access highway that extends through Connecticut from New Haven on the south to the Massachusetts border passes through the neighborhood. Country Club Road, which also passes through the neighborhood is an east/west roadway that begins at the Middletown/Meriden city line and extends to East Street. A full interchange with Interstate 91 is located at the point the two roadways intersect. Located on the westerly side of this intersection are several newer office buildings. An industrial park and the facilities of Aetna Insurance are located to the north. The remaining areas on both sides of Interstate 91 are primarily residential with large parcels of undeveloped land.

The immediate neighborhood is dominated by Higby Mountain, which is a trap rock ridge that extends from Route 66 northerly to Country Club Road and parallel to Interstate 91. The Mattabasset Trail passes through the mountain and the Addler and Mount Higby reservoirs are located to the southeast of the ridge.

Overall, the subject neighborhood is considered to be a primarily residential area enjoying good accessibility to major highways, employment centers and neighborhood support facilities.

## SITE DESCRIPTION

The subject property consists of an irregularly shaped parcel of land having approximately 50 feet of frontage along Country Club Road/Massa Tom Road and approximately 2,000 feet of non contiguous frontage along Massa Tom Road (not a municipal public highway), containing an area of approximately 140 acres. No survey is available for the site and the legal description of record only identifies frontage on Massa Tom Road and a "highway", presumed to be Massa Tom Road. Assessor's tax maps indicate the possibility of some frontage along Country Club Road where Country Club Road and Massa Tom Road intersect. At this point, there is located a short stub of a street. For purposes of this appraisal, it is assumed that the minimum frontage available to access the subject property would be from this location.

The site consists mostly of sloping and rolling contours ranging from its highest elevation (approximately 450 feet) in the southwesterly portion of the site to its lowest elevation (approximately 300 feet) along Massa Tom Road. The slope is continuous at approximately the same degree from the southwesterly corner to the northeasterly corner (Country Club Road) of the property. The subject site is lightly to heavily wooded with numerous rock outcroppings. Only general information is available pertaining to subsurface soil conditions. An examination of the U.S. Department of Agriculture's Soil Survey of New Haven County indicates that the appraised property contains a variety of soil types including CyC, HyC, HZE, Rp and some Wt. No field survey was performed to determine the exact amount and location of inland wetlands, however, available information indicates a band of wetlands extends northerly from the southerly boundary in the center portion of the property. My inspection did not reveal any outward signs of hazardous materials or soil contamination on the subject property.

Public utilities directly available to the property include electricity and telephone. Public water is available approximately 1,000 feet easterly of the subject site at the intersection of Country Club Road and Partridge Lane, which is a 20 inch low pressure gravity line at elevation 270. If it was extended to the subject property a booster pump would be required in as much as the lowest elevation of the subject property is 300. Sanitary sewers are not located in the area and individual septic systems would be required. No current perk test data is available and because of the soil types that comprise the subject property, it is assumed that on site systems would require special design and installation, and may require oversized lots. No information was available to determine the suitability of the soils for on site septic systems.

## ZONING

The subject property is located in the R-45 Residential Zone Classification.

Uses permitted include a detached single family dwelling, farming and natural open space conservation lands or wildlife and forest preserves.

Uses permitted by Special Exception subject to site plan approval include child care facilities, fraternity and sorority houses, elderly housing, extraction of natural resources, stands for the display and sale of farm, truck garden, forestry and nursery produce grown on the premises, municipal buildings, churches and places of worship, convents and monasteries, colleges, universities, educational institutions, cemeteries, libraries and museums, outdoor municipal recreational uses, developed open space e.g., arboreta and home occupations.

Yard and bulk regulations are as follows:

### Minimum Requirements

Lot Area:	45,000 Sq.Ft.
Frontage and Lot Width:	200 Feet
Front Yard:	50 Feet
Side Yard:	20 Feet
Rear Yard:	30 Feet

### Maximum Requirements

Building Coverage:	25 Percent
Building Height:	3.5 Stories

## ASSESSMENT AND TAX DATA

The City of Middletown currently assesses real estate on the basis of 70% of market value as established by the 1998 revaluation. The base tax rate applicable for the October 1, 1999 Grand List is 29.0 mills. An additional tax applicable to the Westfield Fire District is 1.20 mills. The total mill rate applicable to the subject property is 30.2 mills. The current assessments and tax burdens are as follows:

### Assessment Map 3, Block 20-1, Parcel 9

Land - (145.9 Acres)	\$540,820
Current Annual Tax Burden:	\$16,332.76
This property is carried as tax exempt	

## DESCRIPTION OF THE IMPROVEMENTS

Currently, the subject site consists of vacant unimproved land, therefore, no further improvement descriptions are applicable.

## HIGHEST AND BEST USE

Highest and best use is defined in the Dictionary of Real Estate Appraisal, published by the American Institute of Real Estate appraisers, Page 152, as:

1. the reasonable and probable use that supports the highest value of vacant land or improved property, as defined, as of the date of the appraisal;
2. the reasonably probable and legal use of land or sites as though vacant, found to be physically possible, appropriately supported, financially feasible, and that results in the highest present land value; and
3. the most profitable use.

Implied in these definitions is that the determination of highest and best use takes into account the contribution of a specific use to the community and community development goals as well as the benefits of that use to individual property owners. Hence, in certain situations, the highest and best use of land may be for parks, greenbelts, preservation, conservation, wildlife habitats, and the like.

In determining the highest and best use for the subject property, consideration has been given to its general and specific location; size, shape and topography; zoning to which it is subject, availability of utilities, and the demand for residential land within the City of Middletown and the surrounding market area.

The subject property consists of a 140 acre +/- irregularly shaped parcel of land containing approximately 50 feet of frontage on an improved street. The property also contains approximately 2,000 feet of frontage along Massa Tom Road, (not a municipal public highway) is utilized as a hiking trail. Access to the subject property is assumed to be available at the intersection of Country Club Road and Massa Tom Road. The topography consists of sloping contours with no extreme variations and an area of wetlands in the central most portion.

The general neighborhood is residential in character consisting of both older and newer single family dwellings and large amounts of vacant land. In addition, the area enjoys convenient access to Interstate 91, which provides accessibility to the southern and central Connecticut corridor.

## HIGHEST AND BEST USE

The subject property is located in the R-45 Residential Zone Classification which permits residential improvements on lots containing a minimum of 45,000 square feet. Based upon a review of zoning requirements within the R-45 Zone Classification as well as a physical of the site, it is my opinion that the property has potential to be subdivided into residential building lots. However, the viability for development and the extent of said development would require engineering, soil testing etc., as well as approvals from various city agencies and departments.

The property could also be developed in accordance with the City of Middletowns "Large Lot Environmentally Sensitive Subdivisions Which Allow Private Roads" zoning regulations. These regulations allow subdivisions on private roads (minimum 18 foot wide) in R-45 Zones which consist of not more than twenty lots. The purpose of the LLESS provision is to encourage and allow for creative and more flexible site planning and building placement and more efficient and economical land development. Also to provide for greater open space preservation. Massa Tom Road could be utilized as the basis for access to this type of subdivision. Reference is made to the addenda of this appriaisal report for the requirements applicable to LLESS subdivisions.

An alternative to development of the property would be to preserve it in its natural state for passive recreational purposes.

After considering all relevant factors, it is my opinion that the highest and best use of the subject property is for residential development in accordance with zoning regulations, if feasible, or its preservation as open space land for passive recreational purposes.

## VALUATION PREMISE

In the valuation of the subject property, consideration has been given to the three accepted methods of valuing real estate.

**COST APPROACH** - A set of procedures in which an appraiser derives a value indication by estimating the current cost to reproduce or replace the existing structure deducting for all accrued depreciation in the property and adding the estimated land value.

**SALES COMPARISON APPROACH** - A set of procedures in which an appraiser derives a value indication by comparing the property being appraised to similar properties that have been sold recently, applying appropriate units of comparison, and making adjustments, based on the elements of comparison, to the sale prices of the comparables.

**INCOME CAPITALIZATION APPROACH** - A set of procedures in which an appraiser derives a value indication for income-producing property by converting anticipated benefits into property value. This conversion is accomplished either by 1) capitalizing a single year's income expectancy or an annual average of several years' income expectancies at a market-derived capitalization rate or a capitalization rate that reflects a specified income pattern, return on investment, and change in the value of the investment; or 2) discounting the annual cash flows for the holding period and the reversion at a specified yield rate.

### Dictionary of Real Estate Appraisal

American Institute of Real  
Estate Appraisers, Pages  
75, 268 and 159 respectively

#### VALUATION PREMISE

The subject properties value is being established in accordance with my conclusions as set forth in the highest and best use analysis.

#### COST APPROACH

This approach consists of establishing the properties unimproved land value, the estimated depreciated cost of the improvements and the estimated contributory value of the site improvements. The sum total of these items establishes the indicated value by the Cost Approach.

The Cost Approach is developed for the purpose of establishing the market value of new or nearly new improved properties that represent the highest and best use of the land. Inasmuch as the subject properties are vacant land, this valuation method has not been developed.

#### INCOME CAPITALIZATION APPROACH

Although land is sometimes leased for development, it does not possess the typical characteristics of an investment property. Therefore, this approach to value has not been developed in this appraisal report.

#### SALES COMPARISON APPROACH

It has been determined that the Highest and Best use of the subject property is for residential development, if feasible, or to preserve it as open space for passive recreational usage. This conclusion was based on several factors including its minimal accessibility and physical characteristics. Properties of this type are sometimes purchased for assemblage with adjoining land that may add utility to the combined parcels. Land of this type is also acquired by municipalities, the State of Connecticut, various conservation groups, clubs, etc. for preservation as open space or private recreational use. In recent years acquisition activity has increased due to the availability of financial grants from the State of Connecticut.

The principal characteristics of the subject property are its minimal accessibility (useable existing street frontage), physical features and size. As a result, the Sales Comparison Approach utilizing sales of acreage having one or both of these characteristics is considered to be the most applicable method of valuation.

The following sales of residential acreage acquired by both private and public entities have been considered.

LAND SALE NO. 1

Address: W/S Savage Hill Road, Berlin, CT.  
Grantor: Vernlund Properties LLC  
Grantee: Erl Wicklund Inc.  
Reference: Volume 428, Page 763  
Date of Sale: December 8, 1999  
Land Area: 82.21 acres  
Zoning: R15, R21 and R43 (Residential)  
Frontage: 123.01 ft. Savage Hill Road  
61.33 ft. Circlewood Drive  
70.22 ft. Somerset Drive  
Utilities: Electricity, telephone, municipal  
water and sewers  
Sale Price: \$500,000

Comments: The sale property consists of an irregular shaped parcel of land with small amounts of frontages on four streets. The property slopes downward from Savage Hill Road to a low wet area that contains a brook and substantial wetlands. The parcel then rises to the rear property line. The property is both cleared and wooded and is subject to a sewer line easement. The property has been approved for a 24 lot open space subdivision with expansion potential. Access to the lots is to be over extensions of Circlewood Drive and Somerset Drive.

Sale Price/Acre: \$6,083

LAND SALE NO. 2

Address: E/S, S/S Howd Road, Durham, CT.  
Grantor: Town of Wallingford  
Grantee: Town of Durham  
Reference: Volume 166, Page 770  
Date of Sale: December 29, 1999  
Land Area: 157.75 acres  
Zoning: FR Residential  
Frontage: 5,716.35 feet Howd Road  
258.27 feet Side Hill Drive  
Utilities: Electricity, telephone, well & septic  
Sale Price: \$790,000

Comments: The sale property is an irregularly shaped parcel of land having frontage along three streets including approximately 76 feet along the northwesterly side of Middletown-New Haven Turnpike, a.k.a. Connecticut Route 17, approximately 5,716.35 feet of non-contiguous frontage along the southeasterly, southerly and southwesterly sides of Howd Road and approximately 258.27 feet along the southerly side of the cul-de-sac of Side Hill Drive. The parcel contains an area of approximately 157.75 acres, exclusive

LAND SALE NO. 2 (CONTINUED)

of the turn-around at the south end of Side Hill Drive. The site, which contains a wide array of topographical characteristics, consists of level to rolling and steep sloping contours. Currently, the site consists of vacant, unimproved land containing a combination of mostly densely wooded and open cleared farm land. The property, which contains three acres of wetlands and three brooks, was acquired by the Town of Durham for open space and protection of the watershed areas.

Sale Price/Acre: \$5,008

LAND SALE NO. 3

Address: Johnson Lane & Haddam Quarter Road  
Durham, CT.  
Grantor: David and Janice Newton  
Grantee: Christopher and Kerrie Flanagan  
Reference: Volume 168, Page 532  
Date of Sale: May 16, 2000  
Land Area: 51.99 acres  
Zoning: FR (Residential)  
Frontage: 1,512.57 ft. Johnson Lane  
1,983.73 ft. Haddam Quarter Road  
Utilities: Electricity, telephone, well & septic  
Sale Price: \$500,000

Comments: The sale property consists of an irregularly shaped parcel which contains both level and sloping contours. It is traversed by a small brook and a portion of a CL&P easement in the northeast corner. It contains a high frontage to area ratio.

Sale Price/Acre: \$9,617

LAND SALE NO. 4

Address: W/S Atkins Street, Middletown, CT.  
Grantor: Sunrise Farm Project LLC  
Grantee: Steeplegate Associates LLC  
Reference: Volume 1187, Page 654  
Date of Sale: January 20, 1999  
Land Area: 96.921 acres  
Zoning: Residential (R-60)  
Frontage: 875.94 feet Atkins Street  
2,212 feet Stantack Road (not a  
municipal highway)  
Utilities: Electricity, telephone, well & sewers  
Sale Price: \$550,000

Comments: The sale property is an irregularly shaped parcel with steep slopes and rolling contours. The property was approved for a 44 lot subdivision at the time of sale requiring substantial extraordinary development costs. Engineering plans were included in the sale.

Sale Price/Acre: \$5,760

LAND SALE NO. 5

Address: Juliano Drive, Rear Still Hill Road  
Hamden, CT.  
Grantor: Sixty Acre LLC  
Grantee: KBJ LLC  
Reference: Volume 1895, Page 215  
Date of Sale: October 19, 1999  
Land Area: 151.71 acres  
Zoning: Res 2 (Residential)  
Frontage: 50 feet  
Utilities: Electricity, telephone, well & septic  
Sale Price: \$824,000

Comments: The sale property consists of a two irregularly shaped parcels of land (91.42 acres and 60.29 acres) that front the easterly and westerly sides of Juliano Drive (unimproved). Juliano Drive is improved from Tom Swamp Road to the sale property and its development would require the extension of Juliano Drive. Both parcels are wooded with rolling and sloping topography with areas of inland wetlands. Utilities available to the property include electricity and telephone. Water and sanitary disposal would be by on site wells and septic systems.

Sale Price/Acre: \$5,431

LAND SALE NO. 6

Address: Haddam Quarter Road, Durham, CT.  
Grantor: Haddam Quarter Association  
Grantee: Ianuzzi Construction Co., Inc.  
Reference: Volume 164, Page 357  
Date of Sale: July 9, 1999  
Land Area: 48.4 acres  
Zoning: FR Residential  
Frontage: 505 feet  
Utilities: Electricity, telephone, well & septic  
Sale Price: \$370,000

Comments: The sale property is an irregularly shaped parcel of land containing 505 feet of non-contiguous frontage on Haddam Quarter Road, containing an area of 48.4 acres. The property has rolling contours and is traversed by a small brook. It is proposed for subdivision into 15 lots including 6.92 acres of open space.

Sale Price/Acre: \$7,645

LAND SALE NO. 7

Location: Durham-Madison Road, Route 79, Madison  
Grantor: The Nature Conservancy of Connecticut, Inc.  
Grantee: The Hammonasset Fishing Association  
Date of Sale: September 28, 1998  
Reference: Volume 818, Page 154 & 160  
Sale Price: \$300,000  
Zone: RU-1  
Land Area/Frontage: 67.41 acres/51.12 feet  
Land Data: This sale consists of two, irregularly shaped and contiguous parcels land that are heavily wooded and include a small band of wetlands. The parcel also has access at the terminus of Suffolk Drive.  
Comments: The property was sold subject to a conservation easement and other development limitations for open space and recreational use by the grantee.  
Financing: None recorded

Sale Price/Acre: \$4,450

LAND SALE NO. 8

Location: S/S Gaylord Farm Road, Wallingford  
Grantor: Joseph Gall  
Grantee: Joseph Williams, III  
Date of Sale: November 10, 1999  
Reference: Volume 945, Page 990  
Sale Price: \$350,000  
Zone: RU-40  
Land Area/Frontage: 51.75 Acres/1,075.87 feet  
Land Data: The sale property consists of an irregularly shaped level parcel of wooded land located in an RU-40 Zone. The site has 1,075.87 feet of frontage along Gaylord Farm Road and contains approximately 50% inland wetlands. The site is also encumbered by a gas line easement. Utilities available to the site include electricity and telephone. Water and sewage disposal are by on site wells and septic system. Sewers can be extended to the site at a considerable cost. The property also contains substantial frontage along Tuttle Avenue which is a paper street that can not be improved to develop the subject property. This property which was acquired after foreclosure action was brought against the previous owner, borders the Cheshire town line on the west. Approximately ten years ago the site had been approved for subdivision. However, these approvals have expired.

Comments:

Financing: None recorded

Sale Price/Acre: \$4,142.56

LAND SALE NO. 9

Location: Killingworth-Durham Road, Route 148, Killingworth  
Grantor: Herman J. and Joan M. Hoil  
Grantee: The Madison Rod and Gun Club, Inc.  
Date of Sale: January 28, 1999  
Reference: Volume 153, Page 339  
Sale Price: \$200,000  
Zone: R-2  
Land Area/Frontage: 45.13 acres/71.45 feet  
Land Data: This sale consists of three irregularly shaped parcels that have 71.45 feet of frontage on an improved road as well as extensive frontage on an unimproved road. The site is heavily wooded and evidences a varied topography. There are various wetland areas as well as evidence of ledge.

LAND SALE NO. 9 (CONTINUED)

Comments: Purchased by an adjacent owner for expansion of their recreational based organization.  
Financing: The Guilford Savings Bank provided a mortgage of \$200,000 secured by this sale and other land of the buyer; 7.5% interest rate; rate adjustment after 10 years; note is due February 1, 2019.  
Sale Price/Acre: \$4,432

LAND SALE NO. 10

Location: N/E Killingworth-Durham Road (Route 148), and Little City Road, Killingworth  
Grantor: W.E. Hoblitzelle III  
Grantee: The Nature Conservancy of CT., Inc.  
Date of Sale: December 15, 1997  
Reference: Volume 145, Page 888  
Sale Price: \$350,000  
Zone: R-2  
Land Area/Frontage: 76.6459 acres/ 1,679.54 = Rt. 148, 1,362.56 feet = Little City Road  
Land Data: The topography for the most part, is substantially depressed below Route 148 and represents inland/wetlands, thus mitigating the amount of frontage. The parcel evidences a rolling topography along Little City Road and includes rock outcroppings. Utilities available to the site include electricity and telephone. Water and sewerage disposal is by means of on site wells and septic systems.  
Comments: The sale property abuts land of the Hammonasset Fishing Association on the north and the Cockaponset Forest on the east.  
Financing: None recorded  
Sale Price/Acre: \$4,566

Location	Land Area Zone	Utilities	Date of Sale	Sale Price	Sale Price Per Acre
M/S Savage Hill Rd., Berlin	82.21 Ac. 254.56 Ft.	Elect., telephone water & sewers	12/08/99	\$500,000	\$6,083
E/S, S/S Howd Rd. Durham	157.75 Ac. 5,716.35 Ft.	Elect., telephone well & septic	12/29/99	\$790,000	\$5,008
Johnson Lane, Haddam Quarter Rd., Durham	51.99 Ac. 1,512.57 Ft. 51.99 Ac. 1,983.73 Ft.	Elect., telephone well & septic	05/16/00	\$500,000	\$9,617
W/S Adkins St. Middletown	91.96 Ac. 875.94 Ft.	Elect., telephone wells & sewers	01/20/99	\$550,000	\$5,760
Rear Juliano Dr., Hamden	151.71 Ac. 50 Ft. +/-	Elect., telephone well & septic	10/19/99	\$824,000	\$5,431
Haddam Quarter Rd., Durham	48.4 Ac. 505 Ft.	Elect., telephone well & septic	07/09/99	\$370,000	\$7,645
Route 79 Madison	67.41 Ac. 51.12 Ft.	Elect., telephone well & septic	09/28/99	\$300,000	\$4,456
S/S Gaylord Farms Rd., Wallingford	50.75 Ac. 1,075.87 Ft.	Elect., telephone well & septic (city sewers possible)	11/10/99	\$350,000	\$6,895

SUMMARY OF RESIDENTIAL ACREAGE SALES

Location	Land Area Zone	Utilities	Date of Sale	Sale Price	Sale Price Per Acre
Route 148 Killingworth	45.13 Ac.	Elect., telephone	01/28/99	\$200,000	\$4,432
Route 148 Little City Road Killingworth	76.646 Ac. 1,679.54 Ft. 1,362.56 Ft.	Elect., telephone well & septic	12/15/97	\$350,000	\$4,566
<u>Subject:</u>	275 Ac. 50 Ft. +/-	Elect., telephone wells & septic (city water possible)	NA	NA	NA

## SALES COMPARISON APPROACH

### Analysis of Sales Data

The ten sales utilized in this analysis are for large residentially zone properties which were acquired by private developers, clubs, preservation organizations and municipalities. The majority of the sale properties have development restrictions in one form or another including topography, frontage limitations, availability of utilities, amount and location of wetlands, etc..

The method used in adjusting the sales is the Relative Comparison Analysis. This type of analysis is used when market data is not sufficient to derive dollar or percentage adjustments. Also, it is generally more reflective of the actions of buyers and sellers in the marketplace. That is, to quantify adjustments implies a false sense of precision that does not exist in the market and, in my opinion, does not mirror the behavior of buyers and sellers.

To apply this technique, the appraiser analyzes comparable sales to the subject for differences in Real Property rights Conveyed, Financing Terms, Conditions of Sale, Market Conditions (Time), Location, and Physical Characteristics to determine whether the comparable characteristics are inferior, superior or equal to those of the subject property. The adjustments are not expressed as dollar or percentage amounts. A net adjustment is derived for each comparable which is calculated as the difference between total positive and negative adjustments.

After making general adjustments considered applicable, it is my opinion that the subject property has an indicated unit value of \$6,000 per acre.

Then: 140 acres x \$6,000/acre = \$840,000

**CORRELATION AND FINAL VALUE CONCLUSION**

Indicated Value Via the Cost Approach: Not Developed

Indicated Value Via the Income  
Capitalization Approach: Not Developed

Indicated Value Via the Sales  
Comparison Approach: \$840,000

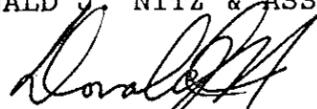
All three approaches to value were considered in this appraisal report. The Cost Approach and Income Approach were not developed inasmuch as the subject property is unimproved vacant land available for development. The Direct Sales Comparison Approach was the only method of valuation developed in this appraisal report.

Predicated upon information set forth in this appraisal report, together with your appraiser's judgment and experience, it is my opinion that the subject property, as herein described, as of October 27, 2000, has an Indicated Market Value of:

**EIGHT HUNDRED FORTY THOUSAND (\$840,000) DOLLARS**

Respectfully submitted,

DONALD J. NITZ & ASSOCIATES, INC.



Donald J. Nitz, MAI, SRA  
President

THIS IS A LEGAL INSTRUMENT AND SHOULD BE EXECUTED UNDER SUPERVISION OF AN ATTORNEY.

To all People to Whom these Presents shall Come, Greeting:

Know Ye, That JEFFREY PIERCE AND LINDA PIERCE, both

of the town of Middletown County of Middlesex State of Connecticut  
for the consideration of Thirty-five Thousand (\$35,000.00) and 00/100 Dollars

received to their full satisfaction of JOSEPH R. PAOLELLA, of the Town of Guilford, County of New Haven and State of Connecticut

DO GIVE, GRANT, BARGAIN, SELL AND CONFIRM unto the said JOSEPH R. PAOLELLA and unto his heirs and assigns, all that certain piece or parcel of land situated in the Town of Middletown, County of Middlesex and State of Connecticut, in the "Society of Westfield" so-called, on the top of Mount Higby, more particularly bounded and described as follows:

On the WEST by land now or formerly of Linda Pierce;

On the NORTH by land now or formerly of William and Harley Bowers and Sherman

On the EAST by land now or formerly of Rhoda Cook; and

ON THE SOUTH by land now or formerly of Curtis or William Bacon.

Said parcel contains fifteen (15) acres more or less, together with a right of passway to said premises in the usual way.



TO HAVE AND TO HOLD the above granted and bargained premises, with the appurtenances thereof, unto him the said grantee his heirs and assigns forever, to him and their own proper use and behoef.

AND ALSO, they the said grantors do for themselves and their heirs, executors, and administrators, covenant with the said grantee his heirs and assigns, that as and until the enrolling of these presents, they are well seized of the premises, as a good indefeasible estate in fee simple; and have good right to bargain and sell the same in manner and form as is above written; and that the same is free from all encumbrances whatsoever, except as above stated.

AND FURTHERMORE, they the said grantors do by these presents bind themselves and their heirs forever to WARRANT AND DEFEND the above granted and bargained premises to him the said grantee his heirs and assigns, against all claims and demands whatsoever, except as above stated.

THE CONDITION OF THIS DEED IS SUCH, that whereas the said grantors are justly indebted to the grantee in the sum of Thirty-five Thousand and 00/100 (\$35,000.00)

as is evidenced by a promissory note of even date herewith

payable to the order of the grantee with 12% interest and due and payable on July 2, 1997, as more particularly appears in the copy of the note attached hereto.

# Know All Men By These Presents

That I, JEFFREY D. PIERCE, of the Town of Middletown, County of Middlesex and State of Connecticut

for divers good causes and considerations thereunto moving, especially for One Dollar and other valuable consideration received to my full satisfaction of

LINDA B. PIERCE, of the Town of Middletown, County of Middlesex and State of Connecticut

have remised, released, and forever quitclaimed, and do by these presents, for myself and my successors and heirs, justly and absolutely remise, release, and forever QUIT CLAIM unto the said Releasee

LINDA B. PIERCE, her

successors, heirs and assigns forever, all such right and title as I the said Releasee JEFFREY D. PIERCE has or ought to have in or to

See Schedule A Attached Hereto

"No Conveyance Tax collected"

*[Signature]*  
Town Clerk of Middletown"

- 1) on Lamentation Mountain - Stantack Road (north from the last residence to the Berlin town line), Middle Road, Lower Road, Topper Road, Old Lamentation Mountain Road
- 2) Mount Higby – Massa Tom Road (also known as Massatom Road, Middle Street and Middle Street South) and an unnamed road network.

Ms. Moore's request is in response to Mr. Lawrence Buck's numerous appearances before the Common Council requesting, inter alia, that the city make improvements to the above referenced roads.

Shipman & Goodwin LLP caused to be conducted an extensive search of the Land Records of the city for recorded public records regarding the roads in question, interviewed town officials, reviewed public records in various administrative city departments, and conducted a visual examination of the Lamentation Mountain area. The city's public records and conversations with municipal employees disclosed limited factual information or data on the roads in question. Many, if not most, of the issues that pertain to and govern the legal status of roads are questions of fact. Therefore, Shipman & Goodwin LLP will employ the considerable body of highway law regarding dedication and acceptance and their applicability to the facts ascertained to determine if the roads in question are private ways or public highways.

#### IV. LEGAL DISCUSSION:

##### A. Introduction

In order to make a determination as to whether a road is a public highway, it is necessary to lay out the law under which such a determination must be made. An

A certain piece or parcel of land in the City of Middletown, County of Middlesex and State of Connecticut on the southeasterly side of Interstate Route 91 as shown on two certain maps or plans entitled "Plan of Property South of Interstate 91 claimed by Milton M. & Ruth M. Castelow Middletown, Conn. Scale 1"=500' Sept 1964" on file in the Office of the Middletown Town Clerk as Map Number 2718 and "Town of Middletown Map Showing land acquired from Milton M. Castelow et al by the State of Connecticut Safety Rest Area on Interstate Route 91 (Limited Access Highway) Scale 1"=100' April 1977 Karl F. Crawford Transportation Chief Engineer-Bureau of Highways Revision 5-4-77 access denied, Property Line E N/F" on file in the Office of the Middletown Town Clerk as Map Number 91B and being more particularly bounded and described as follows:

Beginning at a point marking the southwesterly corner of the herein described premises, said point being in the northerly line of property now or formerly of Stanley Boniewski and the easterly line of property now or formerly of the State of Connecticut, thence running in an easterly direction along land now or formerly of Stanley Boniewski a distance of 548.5 feet more or less to a point; thence turning and running in a northeasterly direction along land now or formerly of Agnes MacDonnell and Frederick and Myrtle Congdon and John J. MacDonnell a distance of 2,200 feet more or less to a point; thence turning and running in an easterly direction along land now or formerly of said John J. MacDonnell a distance of 800 feet more or less to a point; thence turning and running in a southerly direction along land now or formerly of said John J. MacDonnell and land now or formerly of Frederick and Myrtle Congdon a distance of 460 feet more or less to a point; thence turning and running in an easterly direction along land now or formerly of Victor Butterfield a distance of 1,060 feet more or less to a point; thence turning and running in a northwesterly direction along a brook marking the boundary of land now or formerly of Victor Butterfield a distance of 500 feet more or less to a point; thence turning and running in an easterly direction along land now or formerly of said Victor Butterfield a distance of 450 feet more or less to a point; thence turning and running in a northerly direction along land now or formerly of Elizabeth M. Burr a distance of 1,050 feet more or less to a point; thence turning and running in a westerly direction along land now or formerly of The Hartford Electric Light Company a distance of 629.3 feet more or less to a point; thence turning and running in a southwesterly direction along land now or formerly of the State of Connecticut being Interstate Route 91 a distance of 550 feet more or less to a point; thence continuing in a southwesterly direction along said land of the State of Connecticut and Interstate Route 91 a distance of 561 feet more or less to a point; thence continuing in a southwesterly direction along said land of the State of Connecticut and Interstate Route 91 a distance of 705 feet more or less to a point; thence continuing in a southwesterly direction along said land of the State of Connecticut and Interstate Route 91 a distance of 935 feet more or less to a point; thence continuing in a southwesterly direction along said land of the State of Connecticut and Interstate Route 91 a distance of 533 feet more or less to a point; thence continuing in a southwesterly direction along said land of the State of Connecticut and Interstate Route 91 a distance of 821 feet more or less to a point; the foregoing courses all as shown of Map Number 2718 above mentioned; thence turning and running in a southerly direction along land now or formerly of the State of Connecticut a distance of 444 feet more or less to a point; thence continuing in a southerly direction a distance of 523 feet more or less to the point and place of beginning, the last two courses as shown on Map Number 91B above mentioned.

va640 712293

SCHEDULE B

SAID PREMISES ARE CONVEYED SUBJECT TO THE FOLLOWING:

1. SNET Pole Line Easement as shown on Map Number 2718 above mentioned;
2. Possible Right of Way as shown in a warranty deed from Eben W. Bacon to Seymour G. Baldwin dated May 9, 1912 recorded May 13, 1912 in Volume 145 at Page 623 of the Middletown Land Records;
3. Pole Line Easement from Eben W. Bacon to the Southern New England Telephone Company dated December 12, 1929 recorded December 28, 1929 in Volume 180 at Page 659 of the Middletown Land Records;
4. Pole Line Easement from Milton M. and Ruth M. Castelow to Southern New England Telephone Company dated and recorded July 17, 1957 in Volume 284 at Page 982 of the Middletown Land Records;
5. Rights to construct and maintain a paved channel and right to discharge water as described in a certificate of taking by the State of Connecticut dated November 6, 1962 and recorded November 9, 1962 in Volume 327 at Page 509 of the Middletown Land Records;
6. Pole Line Easement from Milton M. and Ruth M. Castelow to Southern New England Telephone Company recorded February 5, 1963 in Volume 329 at Page 301 of the Middletown Land Records;
7. Pole Line Easement from Milton M. and Ruth M. Castelow to Southern New England Telephone Company dated and recorded April 5, 1963, in Volume 330 at Page 9 of the Middletown Land Records;
8. Relinquishment of Rights of Access as described in a warranty deed from Milton M. and Ruth M. Castelow to the State of Connecticut dated May 8, 1963 and recorded June 5, 1963 in Volume 331 at Page 41 of the Middletown Land Records;
9. Easement from Milton M. and Ruth M. Castelow to Hartford Electric Light Company dated February 20, 1964 and recorded February 27, 1964 in Volume 335 at Page 311 of the Middletown Land Records;
10. Certificate of Classification as forest land dated September 10, 1965 and recorded September 24, 1965 in Volume 344 at Page 16 of the Middletown Land Records;
11. Pole Line Easement from Estate of S.G. Baldwin to Southern New England Telephone Company dated December 14, 1929 recorded December 28, 1929 in Volume 180 at Page 660 of the Middletown Land Records.
12. Easement from Malcolm Barton to Southern New England Telephone Company dated and recorded July 17, 1957 in Volume 284 at Page 484 of the Middletown Land Records.

GRANTZ'S LATEST ADDRESS:

5 GEORGE ST.  
MIDDLETOWN, CT. 06457

Recorded by: M. J. 1052 11/10/67 M  
Recorded by: Chittenden  
Date: \_\_\_\_\_

## To all People to Whom these Presents shall Come, Greeting:

Know Ye, That we, VICTOR L. BUTTERFIELD and KATHARINA BUTTERFIELD, both of the Town of Middletown, County of Middlesex, and State of Connecticut,

for the consideration of one dollar and other valuable considerations, but less than One Hundred Dollars,

received to our full satisfaction of WESLEYAN UNIVERSITY OF MIDDLETOWN, CONNECTICUT, an Institution incorporated under the General Assembly of the State of Connecticut and located in the Town of Middletown, County of Middlesex, and said State,

do remise, release, and forever QUIT-CLAIM unto the said Wesleyan University of Middletown, Connecticut, its successors and assigns,

~~the said~~ forever, all the right, title, interest, claim and demand whatsoever as

we, the said releasors, have or ought to have in or to eight (8) certain pieces or parcels of land located in the Town of Middletown, County of Middlesex, and State of Connecticut, and more particularly bounded and described as follows:

**FIRST PIECE:** Bounded:

Northerly by land now or formerly of Sherman Roberts and land now or formerly of August Dreher;  
Easterly by land now or formerly of said Dreher;  
Southerly by land now or formerly of Benjamin Bacon; and  
Westerly by land now or formerly of Sherman Roberts and the land now or formerly of Ebenezer Bacon.

**SECOND PIECE:** Located in the Westfield District, comprising sixteen (16) acres, more or less, and bounded:

Northerly by land now or formerly of E. S. Parmelee and S. G. Baldwin, partly by each;  
Easterly by "Massa Tom" Road;  
Southerly by land now or formerly of Seth J. Hall, John Rohan and Waldo Twiss, partly by each; and  
Westerly by land now or formerly of John Bowers and Edward Reynolds, partly by each.

Said Second Piece above described is subject to building, building line, and zoning restrictions as appear of record.

**THIRD PIECE:** Containing thirty (30) acres, more or less, bounded and described as follows, viz:

Northerly by lands formerly of Timothy Carey, Albert Bacon, and Edward Reynolds, in part by each;  
Easterly by Massatom Road, so-called;  
Southerly by lands formerly of Albert Bacon, et al.; and  
Westerly by lands formerly of Edward Reynolds and one Carter, in part by each.

**FOURTH PIECE:** Situated in the Westfield District and consisting of fifteen (15) acres, more or less, and more particularly bounded and described as follows:

BOOK 324 PAGE 627  
Northerly by land now or formerly of William Wilcox and John Lamb;  
Easterly by a highway;  
Southerly by land now or formerly of Michael Rohan; and  
Westerly by land now or formerly of Eben Bacon.

**FIFTH PIECE:** Situated in the Westfield District of said Town of Middletown, containing twelve (12) acres, more or less, and bounded:

Northerly by land of John Lamb and land of Joel E. Bacon;  
Easterly by the highway;  
Southerly by land now or formerly of Joel E. Bacon; and  
Westerly by land now or formerly of Sebut Bacon.

**SIXTH PIECE:** Situated on Higby Mountain, so-called, and consisting of three (3) acres, more or less, bounded:

Northerly by land now or formerly of Phineas Bacon;  
Easterly by land now or formerly of John Lamb and wife;  
Southerly by land now or formerly of E. Reynolds and Giles Wilcox and Sebut Bacon; and  
Westerly by land now or formerly of Sebut Bacon.

**SEVENTH PIECE:** Situated in said Town of Middletown, containing two (2) acres, more or less, and bounded:

Northerly by land now or formerly of William H. Wilcox;  
Easterly by a well divided mountain road;  
Southerly and  
Westerly by land now or formerly of Sebut Bacon.

**EIGHTH PIECE:** A certain piece or parcel of land situated on the west side of Middle Street in the Town of Middletown, containing twelve (12) acres, more or less, bounded and described as follows:

Northerly by land now or formerly of Albert Bacon;  
Easterly by highway; and  
Southerly by land now or formerly of Ichabod M. Roberts.

The above described premises are a portion of the premises conveyed to Victor L. Butterfield and Katharina Butterfield by Quit-Claim Survivorship Deed from Antoinette L. Strycharz dated October 4, 1962, and recorded in the Middletown Land Records, Volume 327, page 28.

**To Have and to Hold** the premises, with all the appurtenances, unto the said Releasee

its successors ~~and assigns~~ forever, so that neither we, the  
Releasee nor our heirs nor any other person under us or them  
shall hereafter have any claim, right or title in or to the premises, or any part thereof, but therefrom  
we and they are by these presents forever barred and excluded.

**In Witness Whereof,** we have hereunto set our hands and seals

this 22nd day of September, A. D. 1967.

Signed, Sealed and Delivered in presence of

Gail P. Butler

Victor L. Butterfield

Antoinette L. Strycharz

Katharina Butterfield

State of Connecticut,

County of Middlesex,

RR. Middletown,

On this the \_\_\_\_\_ day of September, 1967, before me,

Antoinette L. Strycharz, the undersigned officer, personally appeared

Victor L. Butterfield and Katharina Butterfield,

known to me ~~as the person~~ to be the persons  
whose name are subscribed to the within instrument and acknowledged that they  
executed the same for the purposes therein contained.

**In Witness Whereof,** I hereunto set my hand and official seal

MEMORANDUM

TO: City of Middletown  
Mayor Dominique S. Thornton  
Debra Moore, Administrative Aid to the Mayor

FROM: Arnold Shimelman, Esq.  
Catherine Intravia, Esq.  
Shipman & Goodwin, LLP

DATE: November 29, 1999

RE: City of Middletown  
Lamentation Mountain and Mount Higby Unimproved Roads

---

I. ISSUE:

Whether seven unimproved roads located on Lamentation Mountain and Mount Higby in the western portion of the city of Middletown are public highways.

II. BRIEF ANSWER:

The facts support the conclusion that the seven referenced roads on Lamentation Mountain and Mount Higby are not municipal public highways. As such, the city does not have responsibility for their maintenance or improvement.

III. BRIEF FACTS:

Debra Moore, Administrative Aide to Middletown Mayor Dominique S. Thornton, requested that Shipman & Goodwin LLP determine whether a group of old roads on Lamentation Mountain and on Mount Higby are municipal public highways. Specifically, various citizens have referred to the roads by the following names:

mountain bikes and off road vehicles. As in Ventres, this use does not indicate an implied acceptance. Therefore, Topper Road on Lamentation Mountain is not a public highway.

5. Old Lamentation Mountain Road

a. Dedication - Shipman & Goodwin LLP found no evidence that an owner dedicated Old Lamentation Mountain Road on Lamentation Mountain for public use.

b. Acceptance - Dedication is only effective when acceptance has occurred. Since the road was never dedicated, the city and the public cannot have accepted it. Alternatively, there is no evidence that the municipality has formally accepted this road. Further, the city has not demonstrated any activity that would support an implied acceptance. The city has not cleared debris, paved, placed street signs, plowed, installed sewers, or exerted control over this road. Additionally, the general public has not accepted this road. The general public's is limited to occasional hikers, mountain bikes and off road vehicles. As in Ventres, this use does not indicate an implied acceptance. Therefore, Old Lamentation Mountain Road on Lamentation Mountain is not a public highway.

B. Mount Higby

1. Massatom Road

a. Dedication - Shipman & Goodwin LLP found no evidence that a previous owner or the present owner - the municipal water company- dedicated Massatom Road on Mount Highby for public use.

b. Acceptance - Dedication is only effective when acceptance has occurred.

Since the road was never dedicated, the city and the public cannot have accepted it as a public highway. Further, there is no evidence that the city has formally accepted this road as a public highway.

Further, analysis of the facts do not conclusively support the finding of implied acceptance by the municipality. An old undated map does show a Massa Tom Road, as well as a network of other roads, on Mount Highby. See Exhibit K. However, a D.O.T. map dated December 31, 1998, does not show any roads in the Mount Highby area. See Exhibit L. As courts have stated, lines on a map are not conclusive evidence that a road is a public highway.

As to the assessment of the real property in the immediate vicinity, the present Middletown Assessor's map shows only a broken line road called Massa Tom Road, parallel in some places to a solid line road, with no other connecting or independent network of roads on Mount Highby. See Exhibit M. However, the Assessor, in a letter dated March 4, 1999 stated that "Middle Road, also known as Massa Tom Road, that portion of land south of Country Club Road, in an R-45 zone, is being taxed as an open city street in such zone." See Exhibit N. The assessment of a road as a city street can be evidence of implied acceptance by a municipality, although it must be balanced against other municipal acts. For example, here, as in Ventres, no formal layout of a municipal road was found in the city records. Also, while the present abutting fee owner, the municipal water company, has maintained this road as a service road for its own private use, there is no evidence that the city has held this road out to the general public to be more than a restricted access road. Further, it is our

understanding that this road is not maintained to the level of accepted public highways. Thus, the balance of the evidence supports a conclusion that the town has not impliedly accepted the road.

Additionally, the general public has not accepted this road. Specifically, while the abutting property owners may use this road for alternative access to their properties, the general public's use is limited to occasional hikers and, possibly, off road vehicles. As in Ventres, this use does not indicate an implied acceptance. Therefore, Massatom Road is not a public highway. This finding is consistent with the opinion of the Middletown Department of Public Works. See Exhibit O.

## 2. Unnamed Road Network on Mount Higby

a. Dedication - Shipman & Goodwin LLP found no evidence that an owner dedicated the unnamed road network on Mount Higby for public use.

b. Acceptance - Dedication is only effective when acceptance has occurred. Since the road network was never dedicated, the city and the public cannot have accepted it. Also, there is no evidence that the city has formally accepted this road network. Further, the city has not demonstrated any activity that would support an implied acceptance. A network of roads does appear on an old undated map of the Mount Higby area. See Exhibit K. However, the Middletown Assessor's map shows no roads in the area. See Exhibit M. A recent D.O.T. map does not show roads in the area. See Exhibit L. As courts have stated, lines on a map are not conclusive evidence that a road is a public highway. Further, the municipality has not cleared debris,

paved, placed street signs, plowed, installed sewers, or exerted control over this road network. Therefore, the city has not implied acceptance.

Additionally, the general public has not impliedly accepted this road network.

While the neighboring property's owners, to access their property, may have used these roads, the general public's use has been limited to occasional hikers and, possibly, off road vehicles. As in Ventres, this use does not indicate the public's implied acceptance. Therefore, the unnamed road network on Mount Higby is not a public highway.

#### V. CONCLUSION:

After a careful and deliberate examination of all available facts gathered from our investigation of the public records and related activities, the evidence supports the conclusion that the seven roads discussed above are not public highways. As such, the City of Middletown does not have responsibility for their maintenance or improvement.

255900 v.01

- I. Providing for maximum use of natural light and solar capabilities;
- J. Providing for the maintenance of the visual integrity of hilltops and ridgelines by siting development so that building silhouettes will be below the ridgeline or hilltop or if the area is heavily wooded, the building silhouette will be at least 10 feet lower than the average canopy height of trees on the ridge or hilltop;
- K. Create and maintain the concept of a New England green or "commons" area within the site.

This is an informative list only. The effective designer can produce much more.

(Added effective 6\1\92)

#### **44.08.36 LARGE LOT ENVIRONMENTALLY SENSITIVE SUBDIVISIONS WHICH ALLOW PRIVATE ROADS**

##### **DEFINITION:**

A Large Lot Environmentally Sensitive Subdivision (LLESS) is a subdivision with private roads in the R-45 and R-60 zones which consists of not more than 20 lots all of which meet all zoning and subdivision regulations with the exception of the specific provisions as articulated in this section.

##### **PURPOSE:**

The purpose of the LLESS provision in the Zoning Code is to encourage and allow for creative and more flexible site planning and building placement and more efficient and economical land development. Furthermore, the provision is designed to provide for greater open space preservation and the preservation and/or conservation and enhancement of the sites existing natural features and resources.

As a means of achieving the above stated purpose, variations in the existing regulations may be allowed. The following regulations and requirements may be varied or reduced:

- 1.) lot frontage (max 50 % reduction);
- 2.) lot shape requirements;
- 3.) rear yard setback requirements (max 50 % reduction);
- 4.) max. length -dead end streets (no greater than 2000 ft);

The primary objective of the LLESS is to allow a more environmentally sensitive approach to conventional land subdivision by allowing for the provision of private roads in the outlying rural sections of the city.

##### **PROCEDURE:**

The applicant shall follow the procedure as outlined in Section 44.08.35 of this Code. In addition to the general special exception criteria in Section 44.04 the Commission shall find that the proposal satisfies the criteria as listed in Section 44.08.35 Procedure with the exception of #1. In addition the Commission shall find that the specific purpose and design objectives of the LLESS are being achieved.

- (c) Site constraints, including name of adjoining properties, wells, septic systems, wetlands, flood plains, ground & surface water, and depth to bedrock;
- (d) Explanation of the compost pad design and construction;
- (e) Transportation routes, access and egress to site;
- (f) Methods for drainage, erosion and sedimentation controls;
- (g) Methods for wetting of the leaves;
- (h) Procedures for operation and management of the facility;
- (i) Hours of operation for the area;
- (j) Potential nuisance conditions and procedures to mitigate such nuisances;
- (k) Plan for use of the compost.

(3) The compost area will not be allowed within 200' of surface water, 100' from the property line, 250' from neighboring buildings and shall have a minimum lot area of three acres.

(Added effective 6\30\92)

44.08.38 ADAPTIVE REUSE OF A STRUCTURE FORMERLY USED AS A PLACE OF CONGREGATION FOR MEMBERS OF A RELIGIOUS FAITH

Existing buildings used primarily as a place of congregation for members of a religious faith and having a minimum square footage of 2,000 square feet upon termination of their use as a place of congregation for members of a religious faith may by special exception be used for professional offices. Said structures are more commonly referred to as: churches, temples, synagogues, and meeting halls.

(Added effective 5\30\94)

44.08.39 MODIFICATION OF FRONTAGE AND AREA REQUIREMENTS ON LOTS ESTABLISHED SUBSEQUENT TO 1982

In order to allow for more flexibility and compatibility with existing lots in the development of land in an R-1 Zone located within 1,000 feet of other developed lots or subdivisions, the Commission may grant a Special Exception to allow new lots and subdivisions to be developed with new lots having substantially similar frontage area and yard requirements as existing lots, subject to the following conditions:

1. Proposed new lots or new subdivision shall be within 1,000 feet from the boundary of the existing lots or subdivision, the frontage, yard or area of which are being used to determine the frontage, yard and area of the proposed new lots or subdivision.
2. Proposed new lots must have both City water and sewer.
3. No new lot shall have a frontage of less than fifty (50) feet nor an area of less than five thousand (5,000) square feet.

